

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE	:	BANKRUPTCY NO. 05-12655
	:	CHAPTER 7
DANIEL J. HOWELL AND LINDA L.	:	
HOWELL, DEBTORS	:	
	:	
RICHARD W. ROEDER, TRUSTEE,	:	DOCUMENT NO. 9
Movant	:	
vs.	:	
DANIEL J. HOWELL AND LINDA L.	:	
HOWELL, Respondents	:	

MEMORANDUM AND ORDER

Before the Court is the Trustee's Objection to Exemptions. The Trustee asserts that the Debtors' claim of exemption under §522(d)(3) in a shotgun, rifle and 3 horses is inappropriate and that the Debtors must use §522(d)(5) for those items leaving a reduced amount of the (d)(5) "wildcard" exemption available for the Debtor-wife's Individual Retirement Account ("IRA"). The Trustee also asserts that the Debtors' claim of exemption under §522(d)(10)(E) in the IRA is not appropriate since the Debtor remains employed, the IRA is not in pay status, and the IRA is not reasonably necessary for support of the Debtors.

Debtors have not filed a Response to the Trustee's objection other than to file an Amended Schedule C which does not resolve the issues.

A horse can qualify for exemption under §522(d)(3) if "held primarily for. . .personal, family or household use." 11 U.S.C. §522(d)(3). In re Gallegos, 226 BR 111 (Bankr. D ID 1998) (horse is exempt as household pet); In re Cass, 104 BR 382, 385 (Bankr. ND OK 1989) (horses used only incidentally as pets or riding animals are not held primarily for personal, family or household use, and are not exempt).

From the record before us, we are unable to determine the Debtors' primary use of the

horses. We note that Debtors' Schedule J reflects monthly expenses of \$200 for the horses and an additional \$50 for dogs. Elimination of those expenses would permit the Debtors to fund a dividend of \$15,000 to unsecured creditors in a Chapter 13 Plan. Accordingly, a question arises under §707(b) whether the granting of relief would be a substantial abuse of the provisions of the Bankruptcy code.

Likewise, although it appears that the IRA cannot be claimed as exempt under §522(d)(10)(E), the Debtors have yet to concede the issue.

It is therefore ORDERED as follows:

1. Debtors shall file an Answer to the Trustee's Objection to Exemptions within 20 days.
2. An evidentiary hearing to consider the Trustee's Objection to Exemptions and to consider whether the case should be dismissed pursuant to 11 U.S.C. §707(b) is fixed for February 7, 2006, at 9:00 a.m. in the U.S. Courthouse, Bankruptcy Courtroom, 17 South Park Row, Erie, PA. The entire morning is reserved on the Court's calendar.

December 16, 2005

_____/s/_____
Warren W. Bentz
United States Bankruptcy Judge

c: Richard W. Roeder, Esq.
John E. Nagurney, Esq.